74-631

COURT, U. S. NOV 22 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 73-2113

EDDIE DASSIN, INC., a
California Corporation,

Petitioner,

vs.

EASTERN AIRLINES, INC.,
a corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RONALD L.M. GOLDMAN

9350 Wilshire Blvd.
Suite 224
Beverly Hills, CA 90212
(213) 878-3500 273-5700

Attorney for Petitioners

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 73-2113

EDDIE DASSIN, INC., a
California Corporation,

Petitioner,

vs.

EASTERN AIRLINES, INC.,
a corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RONALD L.M. GOLDMAN

9350 Wilshire Blvd.
Suite 224
Beverly Hills, CA 90212
(213) 878-3500 273-5700

Attorney for Petitioners

TOPICAL INDEX

	Page
Table of Authorities	ii
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT	5
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	8
APPENDIX A	
Opinion of the United States District Court (unreported)	
APPENDIX B	
Opinion of the United States Court of Appeals	

TABLE OF AUTHORITIES

Cases	Page
Eddie Dassin, Inc. v. Eastern Airlines, Inc. (9th Cir. 1974), 501 F.2d 74	6
Orlove v. Philippine Airlines (2nd Cir. 1958), 251 F.2d 384	6

Statutes	
28 U.S.C. §1254(1)	2

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 73-2113

EDDIE DASSIN, INC., a
California Corporation,

Petitioner,

vs.

EASTERN AIRLINES, INC.,
a corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Petitioner prays that a writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on August 5, 1974.

OPINION BELOW

Memorandum opinion of the United States District Court for the Central District of California is unreported and a copy of same is attached hereto as Appendix A. The opinion of the United States Court of Appeals for the Ninth Circuit affirming the holding of the District Court is reported in 501 F.2d 74, a copy of which is also attached hereto as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was made and entered on August 5, 1974, and a copy thereof is attached to this petition as Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

Petitioner Dassin contracted with Respondent Eastern to have two shipments of goods air-freighted from Los Angeles, California to San Juan, Puerto Rico. The

first shipment was unreasonably delayed and the second shipment was lost, both events due to the negligence of Eastern. Eastern's Tariff Rule No. 52 limits liability to damages calculated at $.50 per pound unless a higher value is declared on the air waybill at the time of receipt of shipment from the shipper, and if a higher value is so declared, an additional transportation charge shall be required.

The contract between Dassin and Eastern was negotiated and formed over the telephone, at which time Dassin advised Eastern of the actual value of the goods to be shipped, and Eastern entered the actual value of the goods on the air waybill, but not in the appropriate location.

The District Court held that Dassin could recover on the tardy delivery of the first shipment (which shipment Dassin refused to accept) and on the loss of the second shipment, but that the recovery was limited to $.50 per pound under Rule 52 of Eastern's Tariffs. The Court of Appeals affirmed. The questions presented are:

1. Whether a shipper who declares the actual value of a shipment to the shipping agent, and thereby has done all that he can reasonably be expected to do in order to protect his interest under the tariff rules, will be limited to the tariff recovery rate as though he had made no declaration for value.

2. Whether there exists such a conflict among the several circuits as to what are the duties of a shipper vis a vis advising the carrier of the actual value of the proposed shipment, so as to require a resolution by the United States Supreme Court.

3. Whether the District Court's memorandum opinion evidences such a gross lack of understanding of the facts presented and the issues involved, and the Court of Appeals' affirmation of the Opinion, constitute such a perversion of justice so as to invoke the supervisorial duties of the United States Supreme Court.

STATEMENT

The instant case was tried in the United States District Court for the Central District of California due to the diversity of citizenship of the parties to the action. Dassin (the plaintiff) was a California Corporation and Eastern Airlines (the defendant) was a Delaware Corporation; and the amount in controversy exceeded $10,000.00, exclusive of interest and costs.

The basic facts of the case not in dispute are as follows: Dassin telephoned Eastern's shipping agent in order to have two shipments of sweaters air-freighted from Los Angeles, California to San Juan, Puerto Rico. The agent was informed of the value of the goods and such value was typed on the air waybill. For some undetermined reason, this value was not typed in the space entitled "Declaration for Value but rather was typed in a space entitled "Nature and Quantity of Goods." In the former space was typed the symbol "MAX FREE." Testimony adduced at trial from Eastern's agent Mr. Goldberg was that Goldberg intended that the dollar

value told to him by Dassin be a "declaration of value."

The District Court held that Eastern was liable for its negligence in delivering one shipment some two months late and for losing the second shipment. The Court further held that Dassin would be limited to $.50 recovery per pound under the Tariff Rule 52 notwithstanding the fact that Eastern was apprised of the actual value of the goods and the agent for Eastern intended that such apprisal was a "declaration for value." The United States Court of Appeals for the Ninth Circuit affirmed.

REASON FOR GRANTING THE WRIT

The decisions below should be reviewed for the following reasons:

1. The opinion in Eddie Dassin, Inc. v. Eastern Airlines, Inc. (9th Cir. 1974), 501 F.2d 74, is in direct conflict with the opinion in Orlove v. Philippine Airlines (2nd Cir. 1958), 251 F.2d 384 in that the latter case holds that the person or entity accepting a shipment (in

our case Eastern's agent Goldberg) has a duty to inform the actual carrier (in our case Eastern) of the value of the shipment or at least to inform the Plaintiff to declare the value to the actual carrier when and if he had the opportunity. The Second Circuit decision that this duty exists flys in the face of the Ninth Circuit implicit holding that no such duty exists. Such a conflict between the Ninth Circuit and the Second Circuit should be resolved by the Supreme Court.

2. A gross abuse of the judicial process occurred at the trial level in that the Findings of Fact and Conclusions of Law of the trial court are contradictory, not supported by substantial evidence, contradict admitted facts, were induced by an erroneous view of the law, and were insufficient to maintain the judgment limiting Dassin's damage to $.50 per pound.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

RONALD L.M. GOLDMAN

Attorney for Petitioners